

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES ANDERSON MILLER,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION
(CDCR), et al.,

Defendants.

Case No. [16-cv-02431-EMC](#)

SCHEDULING ORDER

Docket Nos. 70, 77

The order of service stated that, “[i]f Defendants file a motion for summary judgment, Defendants must provide to plaintiff a new *Rand* notice regarding summary judgment procedures at the time they file such a motion. *See Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 2012).” Docket No. 30 at 12. Defendants Schultz and Troup filed a motion for summary judgment (Docket No. 70) that was not accompanied by a *Rand* notice. The failure to comply with the *Rand* notice requirement subjects a ruling granting summary judgment to reversal. *See, e.g., Nelson v. Peck*, Ninth Cir. No. 12-16805 (9th Cir. Nov. 23, 2016) (provision of *Rand* notice at outset of case but not concurrently with the motion for summary judgment was reversible error). To avoid the possibility of such a reversal, the motion for summary judgment filed by Defendants Schultz and Troup is **DENIED** for failure to provide the *Rand* notice. (Docket No. 70.) The denial of the motion for summary judgment is without prejudice to these Defendants filing a new motion for summary judgment that is accompanied by a *Rand* notice.

Plaintiff filed an objection to the motion for summary judgment in which he pointed out the absence of a *Rand* notice. (Docket No. 72.) His familiarity with the *Rand* notice suggests that giving the notice at the time of filing a motion for summary judgment is only a formality in this

1 case, but the Ninth Circuit does require such a notice in any case where the plaintiff is a prisoner
2 proceed *pro se*. In that same filing, Plaintiff objected to Defendants Schultz and Troup filing more
3 than one summary judgment motion and stated that, if the court allows them to file another similar
4 motion for summary judgment, “plaintiff will promptly notice the voluntary dismissal, without
5 prejudice, of defendant Schultz in this action [only].” (*Id.* at 4.) The Court will permit a second
6 motion for summary judgment, as there is no reason to hold a trial if there are not genuine issues
7 of fact necessitating a trial. Plaintiff suffers from no unfair prejudice from a new filing if the first
8 motion is disregarded.

9 The Court is concerned about Plaintiff waiting to dismiss a defendant. If Plaintiff believes
10 Defendant Schultz should be dismissed, Plaintiff should file that dismissal *promptly*. His
11 statement that he is going to wait to file that dismissal suggests a sort of gamesmanship that wastes
12 time and resources of Defendant and the Court. Plaintiff is cautioned that Federal Rule of Civil
13 Procedure 11 allows for sanctions against *unrepresented parties* as well as attorneys for various
14 sorts of misconduct, including submitting filings for an improper purpose, such as to harass, cause
15 unnecessary delay, or needlessly increase the cost of litigation.

16 The Court now sets the following briefing schedule for a new or renewed motion for
17 summary judgment from Defendants Schultz and/or Troup. Defendants Schultz and/or Troup
18 must file and serve the motion for summary judgment with a *Rand* notice no later than
19 **December 23, 2016**. Plaintiff must file and serve his opposition to the motion for summary
20 judgment no later than **January 20, 2017**. Defendant Schultz and/or Troup must file and serve the
21 reply (if any) no later than **February 3, 2017**.

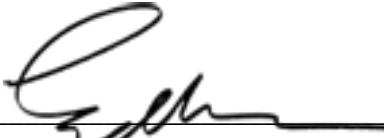
22 Defendants CDCR, Ahmed, Bright, DeLuna, Hall, Posson and Williams, and Plaintiff
23 submitted a stipulated request for a modification of the briefing schedule for summary judgment
24 motions. Upon due consideration, the request is **GRANTED**. (Docket No. 77.) Defendants must
25 file and serve their motion for summary judgment with a *Rand* notice no later than **February 28,**
26 **2017**. Plaintiff must file and serve his opposition to the motion for summary judgment no later
27 than **April 14, 2017**. Defendants must file and serve the reply (if any) no later than **April 28,**
28 **2017**.

1 Plaintiff filed a notice of voluntary dismissal of Olga Beregovskaya. (Docket No. 76.)
2 Accordingly, Olga Beregovskaya is **DISMISSED** from this action.

3 This order disposes of Docket Nos. 70 and 77.

4
5 **IT IS SO ORDERED.**

6
7 Dated: December 14, 2016

8 
9 EDWARD M. CHEN
10 United States District Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28